IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2295 of 1995

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SHASHIKANT RAMANLAL PANCHAL

Versus

SHREE THEATRE

Appearance:

MR GM JOSHI for Petitioner

MR YF MEHTA for Respondent

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 02/03/2000

ORAL JUDGEMENT

1. This is a petition under Article 227 of the Constitution of India though styled as one under Articles 226, 14 and 21 of the Constitution, at the instance of the workman who challenges the judgement and award of the Labour Court, Ahmedabad, in Reference (LCA) No.374/76.

2. Before proceeding further on the merits of the

matter it is desirable to keep in mind the observations of the Supreme Court in the case of Mohmmad Yunus Vs. Mohammad Mustaqim (AIR 1984 SC 38) and Khali Ahmed Bashir Vs. Tufelhussein S. Sarangpurwala (AIR 1988 SC 184), on the question of the scope and ambit of the jurisdiction of this Court in the context of the powers which this Court may exercise under Article 227 of the Constitution. The Supreme Court has observed in the aforesaid two cases that the High Court, while examining a petition under Article 227 of the Constitution of India, cannot reappreciate the evidence and cannot disturb the findings of fact recorded by the courts below except where the same are perverse, and even errors of law cannot be corrected.

3. In the statement of claim before the Labour Court the workman contended that he was engaged as a doorkeeper with the respondent cinema theatre, and that he was doing his work faithfully, but was looked upon with disfavour by the management because he was a member of Cine Films Mazdoor Union and because he was assisting another employee Shri Narayanbhai after the latter was discharged from service. In the claim statement the workman contended that he was issued with a show-cause notice dated 20th October 1975, to which he had replied on 21st October 1975, and nevertheless he was issued another show-cause notice together with a discharge order both dated 7th November 1975. Thereafter in pursuance of the said show-cause notice dated 7th November 1975 an inquiry was proposed and pending the inquiry he was placed under suspension, etc.

3.1 In the written statement at Exh.18 the employer specifically set out the true facts, and frankly admitted certain lapses in the procedure which was sought to be rectified by appropriate action as detailed in the said written statement. The respondent management admitted the issuance of the show-cause notice of 6th November 1975 and the order of discharge dated 7th November 1975. However, the employer also admitted that it was advised that such action may not be justifiable in law, and that therefore by a subsequent order of 5th December 1975, the order of termination dated 7th November 1975 was cancelled, the employee was continued in service though placed under suspension, and was discharged only after a full and fair inquiry. It was further pointed out by the management that all terminal benefits such as notice pay, suspension allowance, encashment of earned leave, etc. had been sent to the workman by money order. The employer narrated in detail as to how the disciplinary proceedings were taken, and how there was absolutely no

violation of any of the principles of natural justice.

4. The Labour Court has examined in considerable detail both the oral and documentary evidence on record which is substantial. On a total scrutiny of such evidence the Labour Court came to the conclusion that the disciplinary inquiry was conducted in complete consonance with the principles of natural justice, and that the findings of misconduct and negligence towards his duties was established as against the workman. The Labour Court also came to the conclusion that the nature of negligence was such (where the spectators of the cinema show, at the conclusion of the show were permitted to leave the theatre from the door meant only for the entry and not for the exit) that such negligence during the Diwali days (6th November 1975) where the theatre was extremely crowded and where the entry hall was crowded with spectators who were to enter the theatre, could have led to serious consequences.

5. The Labour Court has also found, after examining the relevant oral and documentary evidence led by the employer, that the workman has deliberately consciously and intentionally lied to the court in his deposition on oath, on the question of gainful employment pending the reference. This finding recorded by the Labour Court is unassailable.

6. On the facts of the case when it is found that the workman was gainfully employed not only during the pendency of the reference, but also on or about the date when the judgement was to be pronounced, and was further employed with a salary many times the salary he would have received in his erstwhile employment with the respondent employer, the Labour Court was justified in concluding that an order for reinstatement would not be justified, and would also not be in the interests of the workman.

6.1 However, on the facts established on the record, the Labour Court came to the conclusion that there is no evidence as to gainful employment for the period between 8th November 1975 and 30th April 1979 in respect of which period the Labour Court awarded backwages at 50%. To my mind even this is an excessively generous gesture, once it is found that the workman has deliberately and intentionally lied on oath, and has during the course of gainful employment pending reference, earned far more than what would have been due to him by way of backwages. However, I do not propose to interfere with the award of backwages at 50% for the simple reason that the present

petition only seeks increase in the award of backwages, and the respondent-employer has not filed any cross petition for reduction of backwages. As discussed hereinabove, there is absolutely no justification nor any scope whatsoever for increase in the amount of backwages.

8. In the premises aforesaid, the present petition is without any substance and the same is dismissed. Rule is discharged with no order as to costs.

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